necessary treatment, including pharmacological treatment if the person is a serious child sex offender.

6. If the court finds that the person is appropriate for supervised release, the court must notify DHFS. DHFS must make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence.

7. DHFS and the county department in the county of residence must prepare a plan that does all of the following: (a) identifies the treatment and services, if any, that the person will receive in the community; (b) addresses the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (c) specifies who will be responsible for providing the treatment and services identified in the plan.

8. The plan must be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless DHFS, the county department, and the person request additional time to develop the plan.

The ***draft*** creates a new process for granting supervised release. As noted above, DHFS must recommend continued institutional care, supervised release, or discharge through the reexamination process. The new process is:

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the SVP commitment, the DA, or DOJ, may object to the recommendation by filing a written objection with the court.

2. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner.

3. The court must determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person while on supervised release. As under current law, in making this decision, the court may consider the following: (a) the nature and circumstances of the behavior that was the basis of the allegation in the commitment petition; (b) the person's mental history and present mental condition; (c) the person's progress in treatment; (d)

the person's refusal to participate in treatment; and (e) if the court were to authorize supervised release, where the person would live, how the person would support himself or herself, and what arrangements would be available to ensure that the person would have access to and would participate in treatment.

4. The court must select a county to prepare a report on the person's prospective residential options. Unless the court has good cause to select another county, the court must select the person's county of residence.

5. The court must order the county department in the county of intended placement to prepare the report, either independently or with DHFS, identifying prospective residential options. In identifying prospective residential options, the county department must consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of DOC and regarding whom a sex offender notification bulletin has been issued. The county department must complete its report within 30 days following the court order.

6. If the court determines that the prospective residential options identified in the report are inadequate, the court must select one or more other counties to prepare a report.

7. The court may order that a person be placed on supervised release if it finds that all of the following apply:

a. The person who will be placed on supervised release: (1) has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained; and (2) the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed.

b. That there is treatment reasonably available in the community and the person who will be placed on supervised release will be treated by a provider who is qualified to provide the necessary treatment in this state.

c. The provider presents a specific course of treatment for the person who will be placed on supervised release, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court, DOJ, or the DA, as applicable.

d. The person who will be placed on supervised release has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in

writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and DOJ or the DA, as applicable, any unauthorized absence of the person from the housing arrangement.

e. The person who will be placed on supervised release will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court.

f. DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment.

g. The degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources.

SECTION 103. 980.08 of the statutes is repealed and recreated to read:

980.08 Supervised release; procedures, implementation, revocation. (1) If the court determines under s. 980.07 (7) that supervised release is appropriate, the court shall order the county department under s. 51.42 in the county of intended placement to assist the department of health and family services in implementing the supervised release placement.

(2) The department shall file with the court any additional rules of supervision not inconsistent with the rules or conditions imposed by the court within 10 days of imposing the rule.

(3) If the department wishes to change a rule or condition of supervision imposed by the court, it must obtain the court's approval.

(4) An order granting supervised release places the person in the care, control, and custody of the department. The department shall arrange for the care, control, and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the order for supervised release. Before a person is actually released under this section, the court shall notify the municipal police department and county sheriff for the

municipality and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified.

(5) (a) If the department concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release. The department may also detain the person.

(b) If the department concludes that a person on supervised release, or awaiting placement on supervised release, is a threat to the safety of others, it shall detain the person and petition for revocation of the order granting supervised release.

(c) If the department concludes that the order granting supervised release should be revoked, it shall file a statement alleging the violation and a petition to revoke the order for supervised release with the committing court and provide a copy of each to the regional office of the state public defender responsible for handling cases in the county where the committing court is located. If the department has detained the person under par. (a) or (b), the department shall file the statement and the petition and provide them to the state public defender within 72 hours after the detention, excluding Saturdays, Sundays, and legal holidays. The court shall refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j). The determination of indigency and the appointment of counsel shall be done as soon as circumstances permit.

(d) The court shall hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition to revoke shall be made within 90 days of the filing of the petition. Pending the final revocation hearing, the department may detain the person in the county jail or return him or her to institutional care.

(6) (a) If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and the court finds that the violation of the rule merits the revocation of the order granting supervised release, the court may revoke the order for supervised release and order that the person be placed in institutional care. The person shall remain in institutional care until he or she is discharged from the commitment or again placed on supervised release.

(b) If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked, the court shall revoke the order granting supervised release and order that the person be placed in institutional care. The person shall remain in institutional care until he or she is discharged from the commitment or again placed on supervised release.

NOTE: Revises, by repealing and recreating s. 980.08, stats., current law relating to supervision of persons on supervised release. Under ***current law***:

1. An order for supervised release places the person in the custody and control of DHFS. DHFS must arrange for control, care, and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release. A person on supervised release is subject to the conditions set by the court and to DHFS rules.

2. If DHFS alleges that a person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under DHFS rules. DHFS must submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases for that court's county within 72 hours after the detention.

3. The court must hear the petition within 30 days, unless the deadline is waived by the detained person. The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked. If the court determines that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the person be placed in an appropriate institution.

The ***draft*** modifies current law relating to revocation of supervised release as follows:

1. If DHFS concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release.

2. As under current law, DHFS may detain a person for a violation or threatened violation. In addition, under the draft, if DHFS concludes that such a person is a threat to the safety of others, it must detain the person and petition for revocation of the order granting supervised release.

3. If DHFS concludes that the order granting supervised release should be revoked, it must file a statement alleging the violation and a petition to revoke the order with the committing court and provide a copy of each to the regional office of the state public defender within 72 hours after the detention. The court must hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition must be made within 90 days of its filing.

4. If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and that the violation merits the revocation of the order granting supervised release, the court may revoke the order and order that the person be placed in institutional care. If the court finds by clear and convincing evidence that the safety of others requires that supervised release be revoked, the court must revoke the order granting supervised release and order that the person be placed in institutional care.

SECTION 104. 980.09 (title) of the statutes is amended to read:

980.09 (title) **Petition for discharge~~; procedure~~ with department's approval.**

SECTION 105. 980.09 (1) (title) of the statutes is repealed.

SECTION 106. 980.09 (1) (a) of the statutes is renumbered 980.09 (1) and amended to read:

980.09 **(1)** If the ~~secretary~~ department determines at any time that a person committed under this chapter ~~is no longer~~ does not meet the criteria for commitment as a sexually violent person, the ~~secretary~~ department shall ~~authorize the person to~~ petition the committing court

for discharge. The ~~person~~ department shall file the petition with the court and serve a copy upon the department of justice or the district attorney's office that filed the petition under s. 980.02 (1), whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within ~~45~~ 90 days after the date of receipt of the petition.

NOTE: Amends s. 980.09 (1) to:

1. Change the time limit for a hearing on a DHFS petition for discharge from within 45 days to within 90 days (after the date of receipt of the petition).

2. Require DHFS, not the person committed, to file the petition when the department determines that the person does not meet the criteria of an SVP.

SECTION 107. 980.09 (1) (b) of the statutes is renumbered 980.09 (2m) and amended to read:

980.09 **(2m)** At a hearing under this ~~subsection~~ section, the district attorney or the department of justice, whichever filed the original petition, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person of his, her or its choice. ~~The hearing shall be before the court without a jury.~~ The state has the burden of proving by clear and convincing evidence that the petitioner ~~is still~~ currently meets the criteria for commitment as a sexually violent person.

SECTION 108. 980.09 (1) (c) of the statutes is renumbered 980.09 (3) and amended to read:

980.09 **(3)** If the court is satisfied that the state has not met its burden of proof under ~~par. (b)~~ sub. (2m), the petitioner shall be discharged from the custody ~~or supervision~~ of the department. If the court is satisfied that the state has met its burden of proof under ~~par. (b)~~ sub. (2m), the court may proceed under 980.07 (7) (b) to (d) to determine~~, using the criterion~~

~~specified in s. 980.08 (4),~~ whether to modify the petitioner's existing commitment order by authorizing supervised release.

SECTION 109. 980.09 (2) of the statutes is repealed.

NOTE: Repeals the current provision regarding a discharge petition brought without the approval of DHFS. See the NOTE to SEC. 109 for the replacement to s. 980.09 (2).

SECTION 110. 980.093 of the statutes is created to read:

980.093 Petition for discharge without department's approval. (1) PETITIONS IN GENERAL. A committed person may petition the committing court for discharge without the department's approval. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury may conclude the person's condition has changed so that the person does not meet the criteria for commitment as a sexually violent person.

(2) COURT REVIEW OF PETITION. The court shall review the petition within 30 days and the court may hold a hearing to determine if it contains facts from which the court or jury may conclude that the person does not meet the criteria for commitment as a sexually violent person. In determining under this subsection whether facts exist that might warrant such a conclusion, the court shall consider any current or past reports filed under s. 980.07, relevant facts and arguments in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. If the court determines that the petition does not contain facts from which a court or jury may conclude that the person does not meet the criteria for commitment, the court shall deny the petition.

(3) HEARING. The court shall hold a hearing within 90 days of the determination that the petition contains facts from which the court or jury may conclude that the person does not meet the criteria for commitment as a sexually violent person. The state has the burden of

proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person.

(4) DISPOSITION. If the court or jury is satisfied that the state has not met its burden of proof under sub. (3), the petitioner shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court may proceed under s. 980.07 (7) (b) to (d) to determine whether to modify the petitioner's existing commitment order by authorizing supervised release.

NOTE: Creates new s. 980.093 revising the current law relating to discharge from commitment. Under ***current law***:

1. If the secretary of DHFS determines at any time that a person is no longer an SVP, the secretary must authorize the person to petition the committing court for discharge. The court must hold a hearing within 45 days after receipt of the petition. The hearing must be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the person is still an SVP.

2. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

3. A person may also petition the court for discharge from custody or supervision without the approval of the secretary of DHFS.

4. At the time of the person's reexamination, the secretary of DHFS must provide the person with written notice of the person's right to petition for discharge over the secretary's objections. If the person does not affirmatively waive the right to petition, the court must set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still an SVP.

5. If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer an SVP, the court must set a hearing on the issue. The hearing must be to the court. The state has the right to have the person evaluated by experts chosen by the state. The state has the burden of proving by clear and convincing evidence that the committed person is likely to engage in acts of sexual violence or has not made significant progress in treatment or

has refused treatment. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing SVP commitment order by authorizing supervised release.

The ***draft*** modifies the provisions relating to petitions for discharge that do not have DHFS's approval as follows:

1. The court must deny the petition without a hearing unless the petition alleges facts from which the court may conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

2. The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of 6. A verdict must be agreed to by at least 5 of the 6 jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The substitute amendment specifies that the general rules of evidence are inapplicable at such hearings.

3. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

SECTION 111. 980.095 of the statutes is created to read:

980.095 Procedures for discharge hearings. (1) USE OF JURIES. (a) The district attorney or the department of justice, whichever filed the original petition, or the petitioner or his or her attorney may request that a hearing under s. 980.093 or 980.096 be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days of the filing of the petition for discharge.

(b) Juries shall be selected and treated in the same manner as they are selected and treated in civil actions in circuit court. The number of jurors prescribed in par.(a), plus the number of peremptory challenges available to all of the parties, shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause until all jurors have been examined. The parties shall thereupon exercise in their order, the state beginning, the peremptory challenges available to them, and if any party declines to challenge, the challenge shall be made by the clerk by lot.

(c) No verdict shall be valid or received unless it is agreed to by at least 5 of the jurors.

(2) DEPARTMENT'S RIGHT TO BE HEARD. The department of justice shall represent the department of health and family services at any discharge hearing unless the departments have adverse interest. If the departments have adverse interests, the department of health and family services shall be represented at the hearing by its agency counsel or an attorney that it retains.

(3) POST VERDICT MOTIONS. Motions after verdict may be made without further notice upon receipt of the verdict.

(4) APPEALS. Any party may appeal an order under this subsection as a final order under chs. 808 and 809.

NOTE: Creates new s. 980.095 providing for a separate jury requirement for discharge hearings. Specifically, the DA or DOJ, whichever filed the original petition, or the petitioner may request that the discharge hearing be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days after the filing of the petition for discharge. No verdict is valid unless it is agreed to by at least 5 of the jurors. See, also, the NOTE to SEC. 110.

SECTION 112. 980.10 of the statutes is repealed.

NOTE: Repeals a provision granting an additional method by which a committed person may petition a committing court for discharge at any time. However, under this provision, if a person has previously filed a

petition for discharge without the secretary's approval and the court determined that the petition was frivolous or that the petitioner remained an SVP, than the court was required to deny any subsequent petition without a hearing until the petition contained facts upon which a court could find that the condition of the person had so changed that a hearing was warranted.

SECTION 113. 980.101 (2) (a) of the statutes is amended to read:

980.101 **(2)** (a) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense committed by the person, the court shall reverse, set aside, or vacate the judgment under s. 980.05 (5) that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody ~~or supervision~~ of the department.

SECTION 114. 980.11 (2) (intro.) of the statutes is amended to read:

980.11 **(2)** (intro.) If the court places a person on supervised release under s. 980.08 or discharges a person under s. 980.09 or ~~980.10~~ 980.093, the department shall do all of the following:

SECTION 115. 980.12 (1) of the statutes is amended to read:

980.12 **(1)** Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and 980.08 (3), the department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all costs relating to the evaluation, treatment, and care of persons evaluated or committed under this chapter.

SECTION 116. 980.14 (title) of the statutes is created to read:

980.14 (title) **Immunity.**

SECTION 117. 980.14 (1) of the statutes is created to read:

980.14 **(1)** In this section, "agency" means the department of corrections, the department of health and family services, the department of justice, or a district attorney.

NOTE: See the NOTE to SEC. 71.

SECTION 118. Initial applicability.

(1) This act first applies to reviews regarding detention and probable cause hearings under section 980.04 of the statutes, as affected by this act, and trials under section 980.05 of the statutes, as affected by this act, that are based on a petition filed under s. 980.02 of the statutes, as affected by this act, on the effective date of this subsection.

(2) This act first applies to periodic reexaminations conducted under section 980.07 of the statutes, as affected by this act, begun on the effective date of this subsection and to court proceedings resulting from those reexaminations.

(3) This act first applies to proceedings to revoke supervised release under section 980.08 (5) of the statutes, as affected by this act, that are commenced on the effective date of this subsection, except that the treatment of section 980.08 (5) of the statutes, with respect to where a person may be detained while a petition to revoke supervised release is pending, first applies to a person whose detention commences on the effective date of this subsection.

(4) This act first applies to discharge proceedings commenced on the effective date of this subsection.

SECTION 119. Effective date.

(1) This act takes effect on the first day of the 2nd month beginning after publication.

(END)

State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–~~2215/P1~~
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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 51.30 (4) (b) 10m., 980.02 (2) (ag), 980.03 (5), 980.05 (1m), 980.09 (1) (title), 980.09 (2) and 980.10; ***to renumber*** 978.13 (2) and 980.01 (1); ***to renumber and amend*** 938.396 (2) (e), 978.043, 980.015 (1), 980.015 (4), 980.03 (4), 980.04 (2), 980.07 (1), 980.09 (1) (a), 980.09 (1) (b) and 980.09 (1) (c); ***to amend*** 48.396 (1), 48.396 (5) (a) (intro.), 51.30 (3) (a), 51.30 (3) (b), 51.30 (4) (b) 8m., 51.30 (4) (b) 11., 51.375 (1) (a), 51.375 (2) (b), 109.09 (1), 146.82 (2) (c), 301.45 (1g) (dt), 301.45 (3) (a) 3r., 301.45 (3) (b) 3., 301.45 (5) (b) 2., 756.06 (2) (b), 801.52, 808.04 (3), 808.04 (4), 808.075 (4) (h), 905.04 (4) (a), 911.01 (4) (c), 938.396 (1), 938.396 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a), 950.04 (1v) (xm), 967.03, 972.15 (4), 978.03 (3), 978.045 (1r) (intro.), 978.05 (6) (a), 978.05 (8) (b), 980.01 (5), 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (intro.), 980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (4) (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (1), 980.05 (3) (a), 980.05 (3) (b), 980.07 (2), 980.07 (3), 980.09 (title), 980.101 (2) (a), 980.11 (2) (intro.) and 980.12 (1); ***to repeal and recreate*** 809.10 (1) (d), 809.30 (1) (c),

809.30 (1) (f) and 980.08; and ***to create*** 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 756.06 (2) (cm), 814.61 (1) (c) 6., 938.35 (1) (e), 940.20 (1g), 946.42 (3m), 972.15 (6), 973.155 (1) (c), 978.043 (2), 978.13 (2) (a), 980.01 (1g), 980.01 (6) (am), 980.01 (6) (bm), 980.015 (1) (b), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6), 980.031 (title), 980.031 (1) and (2), 980.034, 980.036, 980.038, 980.04 (2) (b), 980.05 (2m), 980.07 (1) (b), 980.07 (1g), 980.07 (1m), 980.07 (4) to (7), 980.093, 980.095, 980.14 (title) and 980.14 (1) of the statutes; **relating to:** the definition of sexually violent person, sexually violent person commitment proceedings, criteria for supervised release, battery by certain committed persons, escape from custody by a person who is subject to a sexually violent person commitment proceeding, and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on sexually violent person commitments. The draft makes various changes to current law (particularly ch. 980, stats.), relating to the commitment, periodic reexamination, supervised release, and discharge of sexually violent persons. The draft makes the following changes in current law:

Definitions

The *draft* revises the definition of "sexually violent person" (SVP), and related definitions, for purposes of ch. 980 as follows:

1. Defines "act of sexual violence" (a term found in the definition of "sexually violent person") to mean conduct that constitutes the commission of a sexually violent offense (SVO).

2. Adds 3rd–degree sexual assault to the list of SVOs covered by the definition.

3. Adds felony murder, administering a dangerous or stupefying drug, robbery, and physical abuse of a child to the list of SVOs if such an offense is determined to be sexually motivated.

4. Expands the list of SVOs to include comparable crimes committed prior to June 2, 1994.

5. Revises the term "sexually motivated" to mean that one of the purposes for an act is for the actor's sexual arousal or gratification (current law) *or for the sexual humiliation or degradation of the victim*. [SECS. 56 to 63.]

Commencement of Commitment Proceedings

Under *current law*, if an agency with jurisdiction (i.e., the agency with the authority or duty to release or discharge the person) has control or custody over a person who may meet the criteria for commitment as an SVP, the agency must inform each appropriate district attorney (DA) and the department of justice (DOJ) regarding the person as soon as possible beginning 3 months prior to the applicable date of the following: (1) the anticipated discharge from a sentence, anticipated release on parole or extended supervision, or anticipated release from imprisonment of a person who has been convicted of an SVO; (2) the anticipated release from a secure juvenile facility of a person adjudicated delinquent on the basis of an SVO; or (3) the termination or discharge of a person who has been found not guilty of an SVO by reason of mental disease or defect.

Under the *draft*, for persons under a sentence, the agency must inform the DA and DOJ regarding the person as soon as possible beginning 90 days before the date of the anticipated discharge or release on parole or extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for an SVO, from a continuous term of incarceration, any part of which was imposed for an SVO, or from a prison placement under the intensive sanctions program, any part of which was imposed for an SVO. [SECS. 66 and 67.] "Continuous term of incarceration, any part of which was imposed for a sexually violent offense" is defined to include confinement in a juvenile facility if the person was placed in the facility for being adjudicated delinquent on the basis of an SVO. [SEC. 65.] The DA and DOJ must also be notified of the anticipated release on parole or discharge of a person committed under ch. 975, stats. (the sex crimes chapter in effect prior to the creation of ch. 980, stats.), for an SVO. [SEC. 70.]

Filing a Commitment Petition

Under *current law*, DOJ may file a petition to commit a person as an SVP at the request of the agency with the authority or duty to release or discharge the person. If DOJ does not file a petition, the DA for the county in which the person was convicted, adjudicated delinquent, or found not guilty by reason of insanity or mental disease, defect, or illness, or the county in which the person will reside, may file the petition.

Under the *draft*: (1) the DA of the county *in which the person is in custody* may also file the petition; (2) a juvenile court does *not* have jurisdiction over a petition involving a child; and (3) filing fees are eliminated. [SECS. 31, 73, and 77.]

Probable Cause Hearing

Under *current law*, whenever a commitment petition is filed, the court must hold a hearing to determine whether there is probable cause to believe that the person named in the petition is an SVP. If the person is in custody, the court must hold the probable cause hearing *within 72 hours* after the petition is filed, excluding Saturdays, Sundays, and legal holidays. If the person is not in custody, the court must hold the hearing within a reasonable time after the filing of the petition.

Under the *draft*, generally, the court must hold the probable cause hearing *within 30 days*, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown. If the person named in the petition is in custody and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, the hearing must be held no later than *10 days* after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause. [SEC. 89.]

Commencement of Trial on Commitment Petition

Current law specifies that a trial to determine whether the person who is the subject of a commitment petition is an SVP must commence no later than 45 days after the date of the probable cause hearing. The court may grant a continuance of the trial date for good cause.

Under the *draft*: (1) the trial must commence no later than 90 days after the probable cause hearing; and (2) the court may grant *one or more* continuances for good cause. [SEC. 91.]

Change of Venue

Under *current law*, in most civil actions, the court may at any time, upon its own motion, the motion of a party, or the stipulation of the parties, change the venue to any county in the interest of justice, or for the convenience of the parties or witnesses.

The *draft* specifies that the general statutory provision does not apply to SVP proceedings. Instead, the draft creates a change of venue procedure specific to SVP proceedings. The person who is the subject of a commitment petition or who has been committed as an SVP may move for a change of the place of a jury trial on the ground that an impartial jury cannot be had in the county in which the trial is set to be held. If the court determines that there exists in the county such prejudice that a fair trial cannot be had, it must, with one exception, order that the trial be held in any county where an impartial trial can be had. Only one change may be granted and the judge who orders the change in the place of trial must preside over the trial.

Alternatively, the definition provides that instead of changing the place of the trial, the court may order that the jury be selected in another county if all of the following apply: (1) the court has decided to sequester jurors after the commencement of the trial; (2) there are grounds for changing the place of the trial; and (3) the estimated costs to the county appear to be less using an alternate jury rather than changing the place of the trial. [SEC. 84.]

Experts for Examinations

Under *current law*, whenever a person who is the subject of a commitment petition or who has been committed as ~~a sexually violent person~~ is required to submit to an examination, he or she may retain experts or professional persons to perform an examination.

The *draft* provides that, in addition to current law, if a person who is the subject of a commitment petition denies the facts alleged in the petition, the court may appoint at least one qualified physician, psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial. The state may retain a physician, psychologist, or other mental health professional to examine the mental condition of a person who is the subject of a petition or who has been committed and to testify at the trial or any other SVP proceeding at which testimony is authorized. [SEC. 83.]

Right to Remain Silent

In general, under *current law*, at any hearing relating to an SVP commitment, the person who is the subject of the petition has the right to remain silent.

The *draft* does not affect the person's right to remain silent. However, the draft provides that the state may present evidence or comment on evidence that a person who is the subject of a commitment petition or a person who has been committed refused to participate in an examination of his or her mental condition that was being conducted as part of an SVP proceeding or that was conducted before the commitment petition was filed for the purpose of evaluating whether to file a petition. [SEC. 86.]

Hearings to Juries

Under *current law*, the person who is the subject of a commitment petition, the person's attorney, DOJ, or the DA may request that the trial be to a jury of 12 in order to determine whether the person who is the subject of the petition is an SVP. The court may also, on its own motion, require that the trial be to a jury of 12. A verdict of a jury is not valid unless it is unanimous.

The *draft*: (1) provides for a jury of 12, but the parties may stipulate to a smaller number of jurors [SEC. 94]; and (2) specifies that juries must be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that each party is entitled to 4 peremptory challenges (instead of 3, as for other civil actions), unless fewer jurors are to serve on the jury. [SEC. 93.]

The draft also provides a separate jury requirement for discharge hearings. Specifically, the DA or DOJ, whichever filed the original petition, or the petitioner may request that the discharge hearing be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days after the filing of the petition for discharge. No verdict is valid unless it is agreed to by at least 5 of the jurors. [SEC. 111.]

Discovery

In general, under *current law*, in civil proceedings, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Failure to comply with discovery requests may result in payment of expenses, evidentiary punishment, or contempt findings.

The *draft* includes provisions that are specific to discovery in proceedings relating to SVPs and specifically provides that the general discovery process does not apply in ch. 980, stats., proceedings.

Under the draft, upon demand, a prosecuting attorney (PA) must disclose and permit the person or the person's attorney to inspect and copy or photograph all of the following if it is in the possession, custody, or control of the state: (1) any written or recorded statement made by the person concerning the allegations in a petition to commit the person as an SVP or concerning other matters at issue in the trial or proceeding; (2) a written summary of all oral statements of the person that the PA plans to use in the course of the trial or proceeding; (3) evidence obtained by intercepting any oral communication that the PA intends to use as evidence; (4) a copy of the person's criminal record; (5) a list of all witnesses whom the PA intends to call, except rebuttal or impeachment witnesses; (6) any relevant written or recorded statements of a witness; (7) the results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the PA intends to offer in evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, experiment, or comparison; (8) the criminal record of a witness for the state that is known to the PA; (9) any physical or documentary evidence that the PA intends to offer as evidence; and (10) any exculpatory evidence.

Under the *draft*, upon demand, the person who is subject to SVP proceedings must disclose all of the following: (1) a list of all witnesses whom the person intends to call; (2) any relevant written or recorded statements of a witness, except rebuttal or impeachment witnesses; (3) the results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the person intends to offer as evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, experiment, or comparison; (4) the criminal record of a witness for the person that is known to the person's attorney; and (5) any physical or documentary evidence that the person intends to offer as evidence. If, subsequent to compliance with these requirements, and prior to or during trial, a party discovers additional material or witness names, the party must promptly notify the other party of the existence of the materials or names.

The draft specifies that the court: (1) must exclude any witness not listed or evidence not presented for inspection unless good cause is shown for failure to comply; and (2) may advise the jury of the nonresponsiveness of a party. [SEC. 85.]

Confidential Juvenile, Pupil, Mental Health Commitment, and Patient Health Care Records

Under *current law*, the following records are confidential and may be disclosed only to persons and entities specified in the statutes: juvenile court records; law enforcement records relating to juveniles; pupil records; and reports of child abuse and neglect. In addition, the files and records of mental health court proceedings are closed but are accessible to any person who is the subject of a petition for involuntary commitment or other petition under ch. 51, stats. (the Mental Health Act). Patient health care records are confidential and may be released upon request without informed consent only under specified conditions.

Under the *draft*, such records are open for inspection by and production to authorized representatives of the department of corrections (DOC), the department of health and family services (DHFS), DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding. [See, for example, SECS. 3, 4, 5, 8, 15, 17, 36, 38, and 80.]

Mental Health Registration and Treatment Records

Under *current law*, treatment records of an individual may be released without informed consent under specified circumstances. Regarding SVP proceedings, such records may be released to appropriate examiners and facilities for the examination of an individual who is the subject of a petition for commitment or for supervised release. The recipient of any information from the records must keep the information confidential except as necessary to comply with the provisions of the chapter relating to SVP commitments. In addition, such records may be released to DOJ or a DA for a commitment petition if the treatment records are maintained by the agency that has custody or control over the person who is the subject of the petition.

Under the *draft*, treatment records may be disclosed to a physician, psychologist, or other mental health professional retained by a party or appointed by the court to examine a person under the chapter relating to SVP commitments or to authorized representatives of DOC, DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, with the same limitations as provided for other confidential records, as described above. [SEC. 10.]

Admissibility of Juvenile Delinquency Dispositions

Under *current law*, the disposition of a juvenile, and any record of evidence given in a hearing in juvenile court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except as specified under the statutes.

The *draft* creates an exception [i.e., such dispositions are admissible] for a hearing, trial, or other SVP proceeding relating to a person. [SEC. 34.]

Privileged Communications With Health Care Providers

Under *current law*, generally, a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, between the patient and a health care

provider. There is *no privilege* as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian, for court–ordered protective services, or for protective placement if the health care provider in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement.

The *draft* includes in the privilege exception communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP. [SEC. 32.]

Presentence Reports

Under *current law,* after a conviction, the court may order a presentence investigation, which must be disclosed to the defendant's attorney (or the defendant, if unrepresented) and the DA prior to sentencing. The DOC may use the investigation report for correctional programming, parole consideration, or care and treatment.

The *draft* specifies that the presentence investigation report and any information contained in it or upon which it is based may be used by any of the following persons in any evaluation, examination, referral, hearing, trial, post commitment relief proceeding, appeal, or other SVP proceeding: DOC and DHFS; the person who is the subject of the report and his or her attorney; the attorney representing the state or an agent or employee of the attorney; a physician, psychologist, or other mental health professional who is examining the subject of the report; and the court and, if applicable, the jury hearing the case. [SEC. 45.]

Periodic Reexamination

Under *current law,* DHFS must conduct an examination of the mental condition of each person who has been committed as an SVP *within 6 months* of the initial commitment and *every 12 months thereafter* to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. The examiner conducting an examination must prepare a written report of the examination no later than 30 days after the date of the examination. The report must be placed in the person's medical records and a copy must be given to the court.

Under the *draft*:

1. DHFS must conduct the examination *within 12 months* after the date of the initial commitment order and *every 12 months thereafter.* [SEC. 96.]

2. At the time of the examination, DHFS must prepare a treatment report based on its treating professionals' evaluation of: (a) the specific factors associated with the person's risk for committing another sexually violent offense; (b) whether the person has made significant progress in treatment or has refused treatment; (c) the ongoing treatment needs of the person; and (d) any specialized needs or conditions associated with the person that must be considered in future treatment planning.

3. The examiner's report must include an assessment of the risk that the person will reoffend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community. The report must be prepared no later than 30 days after the date of the examination and must be provided to DHFS. [SEC. 100.]

4. DHFS must send the treatment report, the written examination report, and a written statement from DHFS recommending either continued institutional care, supervised release, or discharge to the court, with copies to the DA or DOJ and to the person's attorney. [SEC. 100.]

5. If the report concludes that the person does not meet the criteria for commitment as an SVP, DHFS must petition for discharge. [SEC. 100.]

Requests for Supervised Release

Under *current law*:

1. A person who is committed as an SVP may petition the committing court to authorize supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may petition on the person's behalf at any time.

2. Within 20 days after receiving the petition, the court must appoint one or more examiners who have specialized knowledge determined by the court to be appropriate, who must examine the person and furnish a written report to the court within 30 days after the appointment. If any examiner believes that the person is appropriate for supervised release, the examiner must report on the type of treatment and services that the person may need while in the community on supervised release.

3. The court, without a jury, must hear the petition within 30 days after the examiner's report is filed, unless the time limit is waived by the petitioner. The court must grant the petition unless the state proves by clear and convincing evidence that: (a) it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) the person has not demonstrated significant progress in his or her treatment or the person has refused treatment. In making this decision, the court may consider the nature and circumstances of the behavior that was the basis of the allegation in the petition to commit the person; the person's mental history and present mental condition; where the person will live; how the person will support himself or herself; and what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment if the person is a serious child sex offender.

4. If the court finds that the person is appropriate for supervised release, the court must notify DHFS. DHFS must make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence.

5. DHFS and the county department in the county of residence must prepare a plan that does all of the following: (a) identifies the treatment and services, if any, that the person will receive in the community; (b) addresses the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol and other drug abuse (AODA) treatment; and (c) specifies who will be responsible for providing the treatment and services identified in the plan. The plan must be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless DHFS, the county department, and the person request additional time to develop the plan.

The ~~*draft*~~ creates a new process for granting supervised release. As noted above, DHFS must recommend continued institutional care, supervised release, or discharge through the reexamination process. The new process in the draft is as follows:

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the commitment, the DA, or DOJ, may object to the recommendation by filing a written objection with the court.

2. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner.

3. The court must determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person while on supervised release. In making this decision, the court may consider the same items as under current law, except that the person's progress in treatment or refusal to participate in treatment is added.

4. The court must select a county to prepare *a report on the person's prospective residential options*. Unless the court has good cause to select another county, the court must select the person's county of residence. The court must order the county department in the county of intended placement to prepare the report, either independently or with DHFS, identifying prospective residential options. In identifying options, the county department must consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of DOC and regarding whom a sex offender notification bulletin has been issued. If the court determines that the options identified in the report are inadequate, the court must select another county to prepare a report. The county must report within 30 days of the court order.

5. The court may order that a person be placed on supervised release if it finds that all of the following apply: (a) the person has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained and the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed; (b) there is treatment reasonably available in the community and the person will be treated by a provider who is qualified to provide the necessary treatment in this state; (c) the provider presents a specific course of treatment for the person, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court, DOJ, or the DA, as applicable; (d) the person has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and DOJ or the DA, as applicable, any unauthorized absence of the person from the housing arrangement; (e) the person will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court; (f) DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (g) the degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources. [SEC. 102.]

NOTE – *Supervision of Persons on Supervised Release*

Under *current law*, an order for supervised release places the person in the custody and control of DHFS. DHFS must arrange for control, care, and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release. A person on supervised release is subject to the conditions set by the court and to DHFS' rules. If DHFS alleges that a person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under DHFS' rules. DHFS must submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases for that court's county within 72 hours after the detention. The court must hear the petition within 30 days, unless the deadline is waived by the detained person. The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked. If the court determines that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the person be placed in an appropriate institution.

The *draft* modifies current law relating to revocation of supervised release as follows:

1. If DHFS concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release.

2. As under current law, DHFS may detain a person for a violation or threatened violation. In addition, under the *draft*, if DHFS concludes that such a person is a threat to the safety of others, it must detain the person and petition for revocation of the order granting supervised release.

3. If DHFS concludes that the order should be revoked, it must file a statement alleging the violation and a petition to revoke the order with the committing court and provide a copy of each to the regional office of the state public defender within 72 hours after the detention. The court must hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition must be made within 90 days of its filing.

4. If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and that the violation merits the revocation of the order granting supervised release, the court may revoke the order and order that the person be placed in institutional care. If the court finds by clear and convincing evidence that the safety of others requires that supervised release be revoked, the court must revoke the order granting supervised release and order that the person be placed in institutional care.

[SEC. 103.]

Discharge From Commitment

Under *current law*, if the secretary of DHFS (secretary) determines at any time that a person is no longer an SVP, the secretary must authorize the person to petition the committing court for discharge. The court must hold a hearing, before the court without a jury, within 45 days after receipt of the petition. The state has the burden of proving by clear and convincing evidence that the person is still an SVP. If the court is satisfied that the state has not met its burden, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

Current law also permits a person to petition the court for discharge from custody or supervision *without the approval of the secretary.* At the time of the person's reexamination, the secretary must provide the person with written notice of the person's right to petition for discharge over the secretary's objections. If the person does not affirmatively waive the right to petition, the court must set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still an SVP. If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer an SVP, then the court must set a hearing, to the court, on the issue. The state has the right to have the person evaluated by experts chosen by the state. The state has the burden of proving by clear and convincing evidence that the committed person is likely to engage in acts of sexual violence or has not made significant progress in treatment or has refused treatment. If the court is satisfied that the state has not met its burden, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

The *draft* modifies the provisions relating to petitions for discharge *that do not have DHFS's approval*. The court must deny the petition without a hearing unless the petition alleges facts from which the court may conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in the petition

and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of 6. A verdict must be agreed to by at least 5 of the 6 jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The general rules of evidence are inapplicable at such hearings. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release. [SECS. 110 and 111.]

Failure to Comply With Time Limits

The *draft* provides that failure to comply with any time limit specified in ch. 980, stats.: (1) does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction; and (2) is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered. Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance. [SEC. 86.]

Immunity for Noncompliance With SVP Provisions

Under *current law*, any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with the requirement that an agency notify the DA or DOJ of the anticipated release or discharge of a person who may be an SVP.

Under the *draft*, any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with any provision of the chapter governing SVP commitments (ch. 980, stats.). "Agency" means DOC, DHFS, DOJ, or a DA. [SECS. 71 and 117.]

Escape

Under *current law*, a person in custody who intentionally escapes from custody is guilty of a class H felony, punishable by a fine not to exceed $10,000 and a term of imprisonment and extended supervision not to exceed 6 years. "Custody" is defined as actual custody in an institution, including a secure juvenile facility. It does not include the custody of a probationer, parolee, or person on extended supervision unless the person is in actual custody.

The *draft* modifies the definition of "custody" to include: (1) actual custody in a facility used for the detention of persons committed as SVPs; and (2) without limitation, the constructive custody of a person placed on supervised release. The *draft* specifies that a person who intentionally escapes from custody under the following circumstances is guilty of a class F felony, punishable by a fine not to exceed $25,000 and a term of imprisonment and extended supervision not to exceed 12 years and 6 months: (1) while subject to a detention or custody order pending a petition to commit the person as an SVP; or (2) while subject to an order committing the person to custody of DHFS, regardless of whether the person is placed in institutional care or on supervised release. [SECS. 40 and 41.]

District Attorneys

Under *current law*, the DA in Brown County and the DA in Milwaukee County must each assign one assistant DA to be an SVP commitment prosecutor. Those assistant DAs may file and prosecute SVP commitment proceedings in any prosecutorial unit in the state.

The *draft* specifies that if an assistant DA prosecutes or assists in the prosecution of an SVP case in another prosecutorial unit, the unit in which the case is heard must reimburse the assistant DA's own unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. [SEC. 49.]

Other Items

The *draft* also provides that:

1. Notwithstanding the normal process for gaining personal jurisdiction in a judicial proceeding, a court may exercise personal jurisdiction over the subject of an SVP petition even though the person is not served under the normal process with a verified petition and summons or served with an order for detention and the person has not had a probable cause hearing. [SEC. 86.]

2. A motion for post–commitment relief by an SVP or an appeal from a final order or from an order denying a motion for post–commitment relief will follow criminal appellate procedure. An appeal by the state from a final judgment or order will follow the procedure for civil appeals. [SEC. 86.]

3. Constitutional rights available to a defendant in a criminal proceeding are not necessarily available to the person who is the subject to a commitment petition. [SEC. 92.]

Significant changes to, or additions to, current law are also explained in NOTES following the statutory provision or provisions affected by the draft.

SECTION 1. 48.396 (1) of the statutes is amended to read:

48.396 **(1)** Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d) ~~or~~, (5), or (6) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child or expectant mother involved, to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains

information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

SECTION 2. 48.396 (5) (a) (intro.) of the statutes is amended to read:

48.396 **(5)** (a) (intro.) Any person who is denied access to a record under sub. (1), (1b) ~~or~~, (1d), or (6) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

SECTION 3. 48.396 (6) of the statutes is created to read:

48.396 **(6)** Records of law enforcement officers and of the court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by and production to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

NOTE: Creates a new provision [s. 48.396 (6)] relating to confidentiality of certain records. *Current law* provides that the following records are confidential and may be disclosed only to persons and entities specified in the statutes: (1) juvenile court records; (2) law enforcement records relating to juveniles; (3) pupil records; and (4) reports of child abuse and neglect. Under current law: (1) the files and records of mental health court proceedings are closed but are accessible to any person who is the subject of a petition for involuntary commitment or other petition under ch. 51, Stats. (the mental health act); and (2) patient health care records are confidential and may be released upon request without informed consent only under specified conditions.

Under new s. 48.396 (6):

1. Juvenile court records and law enforcement records relating to juveniles are open for inspection by and production to authorized representatives of the DOC, the DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding.

2. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision.

3. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding.

SECTION 4. 48.78 (2) (e) of the statutes is created to read:

48.78 **(2)** (e) Notwithstanding par. (a), an agency shall, upon request, disclose information to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the information involves or relates to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes specified juvenile records accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 5. 48.981 (7) (a) 8s. of the statutes is created to read:

48.981 **(7)** (a) 8s. Authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the reports or records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes juvenile records relating to abuse or neglect accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 6. 51.30 (3) (a) of the statutes is amended to read:

51.30 **(3)** (a) Except as provided in pars. (b) ~~and~~, (bm), (c), and (d), the files and records of the court proceedings under this chapter shall be closed but shall be accessible to any individual who is the subject of a petition filed under this chapter.

SECTION 7. 51.30 (3) (b) of the statutes is amended to read:

51.30 **(3)** (b) An individual's attorney or guardian ad litem and the corporation counsel shall have access to the files and records of the court proceedings under this chapter without the individual's consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, or commitment under this chapter or ch. 971 ~~or~~, 975, or 980.

SECTION 8. 51.30 (3) (bm) of the statutes is created to read:

51.30 **(3)** (bm) The files and records of court proceedings under this chapter shall be released to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the files or records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

* NOTE: Make records under the mental health act accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 9. 51.30 (4) (b) 8m. of the statutes is amended to read:

51.30 **(4)** (b) 8m. To appropriate examiners and facilities in accordance with s. 971.17 (2) (e), (4) (c), and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 ~~or ch. 980~~.

SECTION 10. 51.30 (4) (b) 8s. of the statutes is created to read:

51.30 **(4)** (b) 8s. To appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the treatment records involve or relate to an individual who is the subject of or who is being

evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

NOTE: Creates a new provision [s. 51.30 (4) (b) 8s.], relating to registration and treatment records under the mental health act. *Current law* specifies that:

1. Treatment records of an individual may be released without informed consent under specified circumstances.

2. Regarding SVP proceedings, such records may be released to appropriate examiners and facilities for the examination of an individual who is the subject of a petition for commitment or for supervised release. The recipient of any information from the records must keep the information confidential except as necessary to comply with the provisions of the chapter relating to SVP commitments.

3. The records may be released to DOJ or a DA for a commitment petition if the treatment records are maintained by the agency that has custody or control over the person who is the subject of the petition.

The *draft* permits treatment records to be disclosed to a physician, psychologist, or other mental health professional retained by a party or appointed by the court to examine a person under the chapter relating to SVP commitments or to authorized representatives of DOC, DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, with the same limitations as provided for other confidential records, as described above.

SECTION 11. 51.30 (4) (b) 10m. of the statutes is repealed.

SECTION 12. 51.30 (4) (b) 11. of the statutes is amended to read:

51.30 **(4)** (b) 11. To the subject individual's counsel or guardian ad litem and the corporation counsel, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patients' rights under this chapter or ch. 48, 971, ~~or~~ 975, or 980.

SECTION 13. 51.375 (1) (a) of the statutes is amended to read:

51.375 **(1)** (a) "Community placement" means conditional transfer into the community under s. 51.35 (1), conditional release under s. 971.17, parole from a commitment for specialized treatment under ch. 975, or ~~conditional~~ supervised release under ch. 980.

SECTION 13m. 51.375 (2) (b) of the statutes is amended to read:

51.375 **(2)** (b) The department may administer a lie detector test to a sex offender as part of the sex offender's programming, care, or treatment. A patient may refuse to submit to a lie detector test under this paragraph. This refusal does not constitute a general refusal to participate in treatment. The results of a lie detector test under this paragraph may be used only in the care, treatment, or assessment of the subject or in programming for the subject. The results of a test may be disclosed only to persons employed at the facility at which the subject is placed who need to know the results for purposes related to care, treatment, or assessment of the patient, the committing court, the patient's attorney, or the attorney representing the state in a proceeding under ch. 980. The committing court to which the results of a test have been disclosed may admit the results in evidence in a proceeding under ch. 980.

NOTE: Clarifies that the results of a lie detector test that are disclosed to a committing court also may be admitted into evidence by the court in a proceeding under ch. 980.

SECTION 14. 109.09 (1) of the statutes is amended to read:

109.09 **(1)** The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department, or received by the department under s. 109.10 (4), no later than 2 years after the date the wages are due. The department may, after receiving a wage claim,

investigate any wages due from the employer against whom the claim is filed to any employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82, 104.12 and 229.8275. In pursuance of this duty, the department may sue the employer on behalf of the employee to collect any wage claim or wage deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10, the department may refer such an action to the district attorney of the county in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having appropriate jurisdiction. Any number of wage claims or wage deficiencies against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings. In actions that are referred to a district attorney under this subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the county in which the violation occurs and used by that county to meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office of the district attorney who prosecuted the action.

SECTION 15. 118.125 (2) (ck) of the statutes is created to read:

118.125 **(2)** (ck) The school district clerk or his or her designee shall make pupil records available for inspection or disclose the contents of pupil records to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the pupil records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning pupil

records made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes pupil records accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 16. 146.82 (2) (c) of the statutes is amended to read:

146.82 **(2)** (c) Notwithstanding sub. (1), patient health care records shall be released to appropriate examiners and facilities in accordance with ~~ss.~~ s. 971.17 (2) (e), (4) (c) and (7) (c)~~, 980.03 (4) and 980.08 (3)~~. The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 ~~or ch. 980~~.

SECTION 17. 146.82 (2) (cm) of the statutes is created to read:

146.82 **(2)** (cm) Notwithstanding sub. (1), patient health care records shall be released to appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the treatment records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning records made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information

obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes patient health care records accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 18. 301.45 (1g) (dt) of the statutes is amended to read:

301.45 **(1g)** (dt) Is in institutional care or on ~~conditional~~ supervised release under ch. 980 on or after June 2, 1994.

SECTION 19. 301.45 (3) (a) 3r. of the statutes is amended to read:

301.45 **(3)** (a) 3r. If the person has been committed under ch. 980, he or she is subject to this subsection upon being placed on supervised release under s. 980.06 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release, before being discharged under s. 980.09 or ~~980.10~~ 980.093.

SECTION 20. 301.45 (3) (b) 3. of the statutes is amended to read:

301.45 **(3)** (b) 3. The department of health and family services shall notify a person who is being placed on conditional release, supervised release, conditional transfer or parole, or is being terminated or discharged from a commitment, under s. 51.20, 51.35 or 971.17 or ch. 975 or 980 and who is covered under sub. (1g) of the need to comply with the requirements of this section.

SECTION 21. 301.45 (5) (b) 2. of the statutes is amended to read:

301.45 **(5)** (b) 2. The person has been found to be a sexually violent person under ch. 980, regardless of whether the person ~~is~~ has been discharged under s. 980.10, 2001 stats., or s. 980.09 or ~~980.10~~ 980.093 from the sexually violent person commitment, except that the person no longer has to comply with this section if the finding that the person is a sexually violent person has been reversed, set aside or vacated.

SECTION 22. 756.06 (2) (b) of the statutes is amended to read:

756.06 **(2)** (b) Except as provided in ~~par.~~ pars. (c) and (cm), a jury in a civil case shall consist of 6 persons unless a party requests a greater number, not to exceed 12. The court, on its own motion, may require a greater number, not to exceed 12.

SECTION 23. 756.06 (2) (cm) of the statutes is created to read:

756.06 **(2)** (cm) A jury in a trial under s. 980.05 shall consist of the number of persons specified in s. 980.05 (2) unless a lesser number has been stipulated to and approved under s. 980.05 (2m) (c). A jury in a hearing under s. 980.09 (2m) or 980.093 (3) shall consist of the number of persons specified in s. 980.09 (2m) or 980.093 (3), whichever is applicable, unless a lesser number has been stipulated to and approved under s. 980.095 (3).

NOTE: See the NOTE to SECTION 93.

SECTION 24. 801.52 of the statutes is amended to read:

801.52 Discretionary change of venue. The court may at any time, upon its own motion, the motion of a party or the stipulation of the parties, change the venue to any county in the interest of justice or for the convenience of the parties or witnesses. This section does not apply to proceedings under ch. 980.

NOTE: See the NOTE to SECTION 84.

SECTION 25. 808.04 (3) of the statutes is amended to read:

808.04 **(3)** Except as provided in subs. (4) and (7), an appeal in a criminal case or a case under ch. 48, 51, 55 ~~or,~~ 938, or 980 shall be initiated within the time period specified in s. 809.30.

SECTION 26. 808.04 (4) of the statutes is amended to read:

808.04 **(4)** Except as provided in sub. (7m), an appeal by the state in either a criminal case under s. 974.05 or a case under ch. 48 ~~or,~~ 938, or 980 shall be initiated within 45 days of entry of the judgment or order appealed from.

SECTION 27. 808.075 (4) (h) of the statutes is amended to read:

808.075 **(4)** (h) Commitment, supervised release, recommitment, discharge, and postcommitment relief under ss. 980.06, 980.08, 980.09, ~~980.10~~ 980.093, and 980.101 of a person found to be a sexually violent person under ch. 980.

SECTION 28. 809.10 (1) (d) of the statutes, as affected by Supreme Court Order 02–01, is repealed and recreated to read:

809.10 **(1)** (d) *Docketing statement.* The person shall send the court of appeals an original and one copy of a completed docketing statement on a form prescribed by the court of appeals. The docketing statement shall accompany the court of appeals' copy of the notice of appeal. The person shall send a copy of the completed docketing statement to the other parties to the appeal. Docketing statements need not be filed in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), in cases under ch. 980, or in cases in which a party represents himself or herself. Docketing statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the state or defendant in permissive appeals in criminal cases pursuant to s. 809.50, except that docketing statements shall be filed in cases arising under chs. 48, 51, 55, or 938.

SECTION 29. 809.30 (1) (c) of the statutes, as affected by Supreme Court 02–01, is repealed and recreated to read:

809.30 **(1)** (c) "Postconviction relief" means an appeal or a motion for postconviction relief in a criminal case, other than an appeal, motion, or petition under ss. 302.113 (7m), 302.113 (9g), 973.19, 973.195, 974.06, or 974.07 (2). In a ch.

980 case, the term means an appeal or a motion for postcommitment relief under s. 980.038 (4).

SECTION 30. 809.30 (1) (f) of the statutes, as affected by Supreme Court 02–01, is ~~repealed and recreated~~ to read:

809.30 **(1)** (f) "Sentencing" means the imposition of a sentence, a fine, or probation in a criminal case. In a ch. 980 case, the term means the entry of an order under s. 980.06.

SECTION 31. 814.61 (1) (c) 6. of the statutes is created to read:

814.61 **(1)** (c) 6. An action for civil commitment under ch. 51, 55, or 980.

NOTE: See the NOTE to SECTION 73.

SECTION 32. 905.04 (4) (a) of the statutes is amended to read:

905.04 **(4)** (a) *Proceedings for hospitalization, control, care, and treatment of a sexually violent person, guardianship, protective services, or protective placement.* There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian under s. 880.33, for control, care, and treatment of a sexually violent person under ch. 980, for court–ordered protective services or protective placement, ~~or~~ for review of guardianship, protective services, or protective placement orders, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, control, care, and treatment as a sexually violent person, guardianship, protective services, or protective placement.

NOTE: Revises current s. 905.04 (4) (c), stats., relating to privileged communications with health care providers. Under *current law*, in general, a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made or information obtained or disseminated for purposes

of diagnosis or treatment of the patient's physical, mental, or emotional condition, between the patient and a health care provider. There is no privilege as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian, for court–ordered protective services, or for protective placement if the health care provider in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement.

The *draft* includes in the privilege exception communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP.

SECTION 33. 911.01 (4) (c) of the statutes is amended to read:

911.01 **(4)** (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a bifurcated sentence under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195 (1r), issuance of arrest warrants, criminal summonses and search warrants; hearings under s. 980.093 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

SECTION 34. 938.35 (1) (e) of the statutes is created to read:

938.35 **(1)** (e) In a hearing, trial, or other proceeding under ch. 980 relating to a person.

NOTE: Creates, with reference to the admissibility of delinquency dispositions, an exception for a hearing, trial, or other SVP proceeding relating to a juvenile. Under current law, the disposition of a juvenile, and any record of evidence given in a hearing in juvenile court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except as specified under the statutes. This SECTION provides that such information is admissible in an SVP proceeding.

SECTION 35. 938.396 (1) of the statutes is amended to read:

938.396 **(1)** Law enforcement officers' records of juveniles shall be kept separate from records of adults. Law enforcement officers' records of juveniles shall not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g), (1m), (1r), (1t), (1x) ~~or~~, (5), or (10) or s. 938.293 or by order of the court. This subsection does not apply to representatives of the news media who wish to obtain

information for the purpose of reporting news without revealing the identity of the juvenile involved, to the confidential exchange of information between the police and officials of the school attended by the juvenile or other law enforcement or social welfare agencies, or to juveniles 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 48.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

NOTE: See the NOTE to SECTION .

SECTION 36. 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and amended to read:

938.396 **(10)** ~~Upon request of the department of corrections to review court~~ A law enforcement agency's records and records ~~for the purpose of providing, under s. 980.015 (3) (a),~~ of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney ~~with a person's offense history, the court shall open for inspection by authorized representatives of the department of corrections the records of the court relating to any juvenile who has been adjudicated delinquent for a sexually violent offense, as defined in s. 980.01 (6)~~ for use in the evaluation or

prosecution of any proceeding under ch. 980, if the records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes law enforcement records relating to juveniles accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 37. 938.396 (5) (a) (intro.) of the statutes is amended to read:

938.396 **(5)** (a) (intro.) Any person who is denied access to a record under sub. (1), (1b), (1d), (1g), (1m), (1r) ~~or~~, (1t), or (10) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

SECTION 38. 938.78 (2) (e) of the statutes is amended to read:

938.78 **(2)** (e) ~~Paragraph (a) does not prohibit the department from disclosing~~ Notwithstanding par. (a), an agency shall, upon request, disclose information ~~about an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent offense, as defined in s. 980.01 (6),~~ to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney ~~or a judge acting under ch. 980 or to an attorney who represents a person subject to a petition~~ for use in the evaluation or prosecution of any proceeding under ch. 980, if the information involves or relates to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The

court in which the ~~petition~~ proceeding under ~~s. 980.02 is filed~~ ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes specified juvenile records accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 39. 940.20 (1g) of the statutes is created to read:

940.20 **(1g)** BATTERY BY CERTAIN COMMITTED PERSONS. Any person committed to an institution described under s. 980.065 that provides care for sexually violent persons and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the ~~institution~~ facility, without his or her consent, is guilty of a Class H felony.

NOTE: Creates s. 940.20 (1g) to provide that an SVP who has been committed under ch. 980 and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the institution, without his or her consent, is guilty of a class H felony. The term "bodily harm" is defined in s. 939.22 (4), stats., to mean physical pain or injury, illness, or any impairment of physical condition. A class H felony is punishable by a fine not to exceed $10,000 or a term of confinement and extended supervision not to exceed 6 years, or both. The crime created in this provision is comparable to the crimes of battery by prisoners and battery to law enforcement officers and fire fighters; probation, extended supervision and parole agents and aftercare agents; and emergency medical care providers. [See s. 940.20 (1), (2), (2m), (3), and (7), stats.]

SECTION 40. 946.42 (1) (a) of the statutes is amended to read:

946.42 **(1)** (a) "Custody" includes without limitation actual custody of an institution, including a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), a secured group home, as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16), a Type 2 child caring institution, as defined in s. 938.02 (19r), a facility used for the detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065,

or a juvenile portion of a county jail, or actual custody of a peace officer or institution guard. "Custody" also includes without limitation the constructive custody of persons placed on supervised release under a commitment order issued under ch. 980 and constructive custody of prisoners and juveniles subject to an order under s. 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily outside the institution whether for the purpose of work, school, medical care, a leave granted under s. 303.068, a temporary leave or furlough granted to a juvenile or otherwise. Under s. 303.08 (6) it means, without limitation, that of the sheriff of the county to which the prisoner was transferred after conviction. It does not include the custody of a probationer, parolee or person on extended supervision by the department of corrections or a probation, extended supervision or parole officer or the custody of a person who has been released to aftercare supervision under ch. 938 unless the person is in actual custody or is subject to a confinement order under s. 973.09 (4).

NOTE: See the NOTE to SECTION 41.

SECTION 41. 946.42 (3m) of the statutes is created to read:

946.42 **(3m)** A person who intentionally escapes from custody under any of the following circumstances is guilty of a Class F felony:

(a) While subject to a detention order under s. 980.04 (1) or a custody order under s. 980.04 (3).

(b) While subject to an order issued under s. 980.06 committing the person to custody of the department of health and family services, regardless of whether the person is placed in institutional care or on supervised release.

NOTE: Revises SECS. 40 and 41, the current crime relating to a person in custody who intentionally escapes from custody (a class H felony, punishable by a fine not to exceed $10,000 and a term of imprisonment and extended supervision not to exceed 6 years). Under *current law*, "custody" is defined as actual custody in an institution, including a secure juvenile facility, but does not include the custody of a probationer, parolee, or person on extended supervision unless the person is in actual custody.

The ~~draft~~:

1. Modifies [in SEC. 40] the definition of "custody" to include: (a) actual custody in a facility used for the detention of persons committed as SVPs; and (b) without limitation the constructive custody of a person placed on supervised release.

2. Specifies [in SEC. 41] that a person who intentionally escapes from custody under the following circumstances is guilty of a class F felony (punishable by a fine not to exceed $25,000 and a term of imprisonment and extended supervision not to exceed 12 years and 6 months):

(a) While subject to a detention or custody order pending a petition to commit the person as an SVP.

(b) While subject to an order committing the person to custody of DHFS, regardless of whether the person is placed in institutional care or on supervised release.

SECTION 42. 950.04 (1v) (xm) of the statutes is amended to read:

950.04 **(1v)** (xm) To have the department of health and family services make a reasonable attempt to notify the victim under s. 980.11 regarding supervised release under s. 980.08 and discharge under s. 980.09 or ~~980.10~~ 980.093.

SECTION 43. 967.03 of the statutes is amended to read:

967.03 District attorneys. Wherever in chs. 967 to ~~979~~ 980 powers or duties are imposed upon district attorneys, the same powers and duties may be discharged by any of their duly qualified deputies or assistants.

SECTION 44. 972.15 (4) of the statutes is amended to read:

972.15 **(4)** After sentencing, unless otherwise authorized under sub. (5) or (6) or ordered by the court, the presentence investigation report shall be confidential and shall not be made available to any person except upon specific authorization of the court.

SECTION 45. 972.15 (6) of the statutes is created to read:

972.15 **(6)** The presentence investigation report and any information contained in it or upon which it is based may be used by any of the following persons in any evaluation, examination, referral, hearing, trial, postcommitment relief proceeding, appeal, or other proceeding under ch. 980:

(a) The department of corrections.

(b) The department of health and family services.

(c) The person who is the subject of the presentence investigation report, his or her attorney, or an agent or employee of the attorney.

(d) The attorney representing the state or an agent or employee of the attorney.

(e) A licensed physician, licensed psychologist, or other mental health professional who is examining the subject of the presentence investigation report.

(f) The court and, if applicable, the jury hearing the case.

NOTE: Revises the current law specifying that, after a conviction, the court may order a presentence investigation, and, if ordered, it must be disclosed to the defendant's attorney (or the defendant, if unrepresented) and the DA prior to sentencing. The DOC may use the investigation report for correctional programming, parole consideration, or care and treatment.

The draft creates new s. 972.15 (6), permitting the presentence investigation report and any information contained in it or upon which it is based to be used by any of the following agencies or persons in any evaluation, examination, referral, hearing, trial, post commitment relief proceeding, appeal, or other SVP proceeding: (1) DOC and DHFS; (2) the person who is the subject of the presentence investigation report and his or her attorney; (3) the attorney representing the state or an agent or employee of the attorney; (4) a physician, psychologist, or other mental health professional who is examining the subject of the report; and (5) the court and, if applicable, the jury hearing the case.

SECTION 46. 973.155 (1) (c) of the statutes is created to read:

973.155 **(1)** (c) The categories in par. (a) include time during which the convicted offender was in the custody of the department of health and family services under ch. 980 only if the offender was confined during that time and the confinement and the offender's conviction resulted from the same course of conduct.

NOTE: Creates s. 973.155 (1) (c), relating to allowing sentence credit time for a convicted offender who was in the custody of the DHFS under ch. 980 if the offender was confined during that time and the confinement and the offender's conviction resulted from the same course of conduct.

SECTION 47. 978.03 (3) of the statutes, as affected by 2005 Wisconsin Act 25, is amended to read:

978.03 **(3)** Any assistant district attorney under sub. (1), (1m), or (2) must be an attorney admitted to practice law in this state and, except as provided in ss. 978.043 (1) and 978.044, may perform any duty required by law to be performed by

the district attorney. The district attorney of the prosecutorial unit under sub. (1), (1m), or (2) may appoint such temporary counsel as may be authorized by the department of administration.

SECTION 48. 978.043 of the statutes is renumbered 978.043 (1) and amended to read.

978.043 **(1)** The district attorney of the prosecutorial unit that consists of Brown County and the district attorney of the prosecutorial unit that consists of Milwaukee County shall each assign one assistant district attorney in his or her prosecutorial unit to be a sexually violent person commitment prosecutor. An assistant district attorney assigned under this ~~section~~ subsection to be a sexually violent person commitment prosecutor may engage only in the prosecution of sexually violent person commitment proceedings under ch. 980 and, at the request of the district attorney of the prosecutorial unit, may file and prosecute sexually violent person commitment proceedings under ch. 980 in any prosecutorial unit in this state.

SECTION 49. 978.043 (2) of the statutes is created to read:

978.043 **(2)** If an assistant district attorney assigned under sub. (1) prosecutes or assists in the prosecution of a case under ch. 980 in a prosecutorial unit other than his or her own, the prosecutorial unit in which the case is heard shall reimburse the assistant district attorney's own prosecutorial unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. Unless otherwise agreed upon by the prosecutorial units involved, the court hearing the case shall determine the amount of money to be reimbursed for expert witness fees under this subsection.

NOTE: Creates a new provision specifying that if an assistant DA prosecutes or assists in the prosecution of an SVP case in another prosecutorial unit, the prosecutorial unit in which the case is heard must reimburse the assistant DA's own prosecutorial unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. *Current law* requires the DA in Brown County and the DA in Milwaukee County to each assign one assistant DA to be an SVP commitment prosecutor, and specifies that those assistant DAs may file and prosecute SVP commitment proceedings in any prosecutorial unit in the state.

SECTION 50. 978.045 (1r) (intro.) of the statutes is amended to read:

978.045 **(1r)** (intro.) Any judge of a court of record, by an order entered in the record stating the cause ~~therefor~~ for it, may appoint an attorney as a special prosecutor to perform, for the time being, or for the trial of the accused person, the duties of the district attorney. An attorney appointed under this subsection shall have all of the powers of the district attorney. The judge may appoint an attorney as a special prosecutor at the request of a district attorney to assist the district attorney in the prosecution of persons charged with a crime, in grand jury or John Doe proceedings, in proceedings under ch. 980, or in investigations. The judge may appoint an attorney as a special prosecutor if any of the following conditions exists:

SECTION 51. 978.05 (6) (a) of the statutes is amended to read:

978.05 **(6)** (a) Institute, commence or appear in all civil actions or special proceedings under and perform the duties set forth for the district attorney under ch. 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a), 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in connection with court proceedings in a court assigned to exercise jurisdiction under chs. 48 and 938 as the judge may request and perform all appropriate duties and appear if the district attorney is designated in specific statutes, including matters within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this paragraph limits the authority of the county board to designate, under s. 48.09 (5), that the corporation

counsel provide representation as specified in s. 48.09 (5) or to designate, under s. 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the interests of the public under s. 48.14 or 938.14.

SECTION 52. 978.05 (8) (b) of the statutes is amended to read:

978.05 **(8)** (b) Hire, employ, and supervise his or her staff and, subject to ss. 978.043 (1) and 978.044, make appropriate assignments of the staff throughout the prosecutorial unit. The district attorney may request the assistance of district attorneys, deputy district attorneys, or assistant district attorneys from other prosecutorial units or assistant attorneys general who then may appear and assist in the investigation and prosecution of any matter for which a district attorney is responsible under this chapter in like manner as assistants in the prosecutorial unit and with the same authority as the district attorney in the unit in which the action is brought. Nothing in this paragraph limits the authority of counties to regulate the hiring, employment, and supervision of county employees.

SECTION 53. 978.13 (2) of the statutes is renumbered 978.13 (2) (b).

SECTION 54. 978.13 (2) (a) of the statutes is created to read:

978.13 **(2)** (a) In this subsection, "costs related to the operation of the district attorney's office" include costs that a prosecutorial unit must pay under s. 978.043 (2) but do not include costs for which a prosecutorial unit receives reimbursement under s. 978.043 (2).

NOTE: See the NOTE to SECTION 49.

SECTION 55. 980.01 (1) of the statutes is renumbered 980.01 (1m).

SECTION 56. 980.01 (1g) of the statutes is created to read:

980.01 **(1g)** "Act of sexual violence" means conduct that constitutes the commission of a sexually violent offense.

NOTE: Creates a new provision [s. 980.01 (1g)] defining "act of sexual violence" to mean conduct that constitutes the commission of an SVO. Under *current law*, one part of the definition of "sexually violent person" is that the person is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in "acts of sexual violence".

SECTION 57. 980.01 (5) of the statutes is amended to read:

980.01 **(5)** "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification or for the sexual humiliation or degradation of the victim.

NOTE: Revises the definition of "sexually motivated" for purposes of ch. 980. Under the *draft*, "sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification *or for the sexual humiliation or degradation of the victim*. *Current law* specifies that "sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification.

SECTION 58. 980.01 (6) (a) of the statutes is amended to read:

980.01 **(6)** (a) Any crime specified in s. 940.225 (1) ~~or~~, (2), or (3), 948.02 (1) or (2), 948.025, 948.06, or 948.07.

SECTION 59. 980.01 (6) (am) of the statutes is created to read:

980.01 **(6)** (am) An offense that, prior to June 2, 1994, was a crime under the law of this state and that is comparable to any crime specified in par. (a).

SECTION 60. 980.01 (6) (b) of the statutes is amended to read:

980.01 **(6)** (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~, 941.32, 943.10, 943.32, or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

SECTION 61. 980.01 (6) (bm) of the statutes is created to read:

980.01 **(6)** (bm) An offense that, prior to June 2, 1994, was a crime under the law of this state, that is comparable to any crime specified in par. (b) and that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

NOTE: Revises [in SECS. 58 to 61] the definition of "sexually violent offense" in ch. 980 to:

1. Add 3rd–degree sexual assault to the list of sexually violent offenses. Under current law, "sexually violent offense" means first– or 2nd–degree sexual assault, first– or 2nd–degree sexual assault of a child, incest with a child, or child enticement. In addition, "sexually violent offense" includes first– or 2nd–degree intentional homicide, first– or 2nd–degree reckless homicide, aggravated battery, aggravated battery to an unborn child, false imprisonment, taking hostages, kidnapping, or burglary if determined to be sexually motivated.

2. Add felony murder, administering a dangerous or stupefying drug, robbery, and physical abuse of a child to the list of sexually violent offenses if such an offense is determined to be sexually motivated.

3. Expand the list of sexually violent offenses to include comparable crimes committed prior to June 2, 1994.

SECTION 62. 980.01 (6) (c) of the statutes is amended to read:

980.01 **(6)** (c) Any solicitation, conspiracy, or attempt to commit a crime under par. (a) ~~or~~, (am), (b), or (bm).

SECTION 63. 980.01 (7) of the statutes is amended to read:

980.01 **(7)** "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence.

SECTION 64. 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and amended to read:

980.015 **(1)** (intro.) ~~In this section, "agency~~ with jurisdiction" means:

(a) "Agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

SECTION 65. 980.015 (1) (b) of the statutes is created to read:

980.015 **(1)** (b) "~~Continuous term of~~ incarceration, any part of which was imposed for a sexually violent offense," includes confinement in a secured

correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

NOTE: Revises [in SECS. 65 to 70] current law relating to the commencement of commitment proceedings. Under *current law*, if an agency with jurisdiction (i.e., the agency with the authority or duty to release or discharge the person) has control or custody over a person who may meet the criteria for commitment as an SVP, the agency must inform each appropriate DA and DOJ regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

1. The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment of a person who has been convicted of an SVP.

2. The anticipated release from a secure juvenile facility of a person adjudicated delinquent on the basis of an SVO.

3. The termination or discharge of a person who has been found not guilty of an SVO by reason of mental disease or defect.

Under the *draft*:

1. For persons under a sentence, the agency must inform the DA and DOJ regarding the person as soon as possible beginning 90 days before the date of the anticipated discharge or release on parole or extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for an SVO, from a continuous term of incarceration, any part of which was imposed for an SVO, or from a prison placement under the intensive sanctions program, any part of which was imposed for an SVO.

2. Determines "continuous term of incarceration, any part of which was imposed for a sexually violent offense," to include confinement in a juvenile facility if the person was placed in the facility for being adjudicated delinquent on the basis of an SVO.

3. Requires the DA and DOJ to be notified of the anticipated release on parole or discharge of a person committed under ch. 975, Stats. (the sex crimes law in effect prior to the creation of ch. 980, Stats.), for an SVO.

SECTION 66. 980.015 (2) (intro.) of the statutes is amended to read:

980.015 **(2)** (intro.) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning ~~3 months~~ 90 days prior to the applicable date of the following:

SECTION 67. 980.015 (2) (a) of the statutes is amended to read: